IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 739 of 2000

in

SPECIAL CIVIL APPLICATION No 9142 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

J S KALAL

Versus

GUJARAT MINERAL DEVELOPMENT CORPORATION

Appearance:

1. LETTERS PATENT APPEAL No. 739 of 2000
SHRI DIWAKARAN FOR SHRI AK CLERK for the appellant.
SHRI KM PATEL for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 09/10/2003

ORAL JUDGEMENT (Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

The appellant workman was appointed as Selection Grade Assistant in the services of the respondent-Gujarat Mineral Development Corporation (for short "the corporation") on 16.12.1971. On 5.1.1987 he was transferred from Ahmedabad to Bhatiya, District Jamnagar. He refused to accept the order of transfer as well as the relieving order and challenged the same before this Court by way of Special Civil Application No.3348 of 1987. No interim relief was granted in his favour by the learned Single Judge and ultimately, the writ petition was dismissed, against which he filed Letters Patent Appeal No.92 of 1992 which was also summarily dismissed by the Division Bench of this Court on 2nd July 1992. Thereafter, the respondent corporation issued charge sheet against the appellant workman for his serious misconduct of not reporting for duty at the place of transfer. After holding regular inquiry he was dismissed from service. The said order of dismissal was challenged by the respondent corporation before the Labour Court, Ahmedabad. The Labour Court allowed the reference and directed the respondent corporation to take him back in service after holding that the termination order is bad in law and illegal. The impugned judgement and award of reinstatement passed by the Labour Court, Ahmedabad was challenged by the respondent corporation by way of Special Civil Application No.9142 of 1998 which was allowed by the learned Single Judge of this Court (Coram: S.K. Keshote, J.) on 30.12.1999 and the impugned judgement and award passed by the Labour Court reinstating the appellant workman in service was quashed and set aside. Aggrieved of this order passed by the learned Single Judge allowing the writ petition filed by the respondent corporation, the appellant workman has approached this Court by way of this Letters Patent Appeal.

2. On 15.9.2003 this appeal was placed before this Bench for final disposal. We had heard the learned counsel for the parties for some time. Learned counsel Shri Diwakaran appearing for the appellant workman stated on instructions from the appellant who was very much

present before the Court that he was going to attain the age of superannuation, i.e. 60 years on September 30, 2003. Therefore, he would not be interested in joining the respondent corporation even if the judgement and order passed by the learned Single Judge is quashed and set aside and the impugned judgement and award passed by the Labour Court of reinstatement in service with 30% back wages is restored by allowing this appeal. He had also stated that he would not be interested in 30% back wages and he will be simply satisfied with the respectful retirement from service if termination order is quashed and set aside by this Court or the same is withdrawn by the respondent corporation itself. He was only interested in gratuity amount, which according to him comes to approximately Rs.2,70,000/-, as per upgraded figure.

3. In view of the aforesaid statement made at the Bar by learned counsel Shri Diwakaran, on instructions from the appellant workman, we had adjourned this matter to 26.09.2003 with a view to take necessary instructions in the matter from the corporation.

4. On 26.09.2003 learned counsel Shri Patel for the corporation had submitted before us that the respondent corporation was not inclined to accept the suggestion made by the appellant workman. Thereafter, we had heard the learned counsel for the appellant for a considerable time and having carefully gone through the impugned judgement and award passed by the Labour Court as well as the judgement and order passed by the learned Single Judge of this Court in the writ petition, prima facie, we were of the opinion that the suggestion made by learned counsel Shri Diwakaran for the appellant workman on 15.09.2003 was just and proper and beneficial to the Corporation, therefore, we had asked Shri Patel, learned counsel for the respondent corporation to have the decision of the corporation reconsidered and accordingly the matter was kept on 09.10.2003, i.e. today.

5. Today, it is heartening to note that, learned counsel Shri Patel for the respondent corporation stated at the Bar that the corporation had agreed to pay the gratuity as per the suggestion of the Court, but the quantum is left to the discretion of the Court. Shri Patel has also placed on record a photostat copy of letter dated 06.10.2003 addressed to him by the Managing Director of the respondent corporation, wherein it is stated that the amount of gratuity as per the suggestion of the Court comes to Rs.3,04,038/-, subject to audit, out of which a sum of Rs.26,360/-, which is already paid

as gratuity to the appellant workman at the time of termination of his services, is to be deducted. Thus, the balance amount comes to Rs.2,77,678/-, subject to audit. However, the corporation felt that the said amount is slightly on higher side. Therefore, the said amount be reduced and the respondent corporation be agreeable to abide by the order issued regarding payment of gratuity to Shri Kalal-the present appellant.

6. In view of the above, we had asked Shri Diwakaran about the final figure to be paid by way of gratuity and we are happy to note that the appellant workman who was present before the Court has also taken a reasonable stand and has agreed to accept the total amount of Rs.2,56,360/-. The appellant workman is already paid a sum of Rs.26,360/-, towards gratuity. Therefore, the remaining amount of Rs.2,30,000/-, from the total amount of Rs.2,56,360/-, is required to be paid by the respondent corporation to the appellant workman, which shall be paid to him by account payee cheque on or before November 01, 2003.

7. In view of the above, by consent of the learned counsel for the parties, without expressing any view about the legality and validity of the judgement and order passed by the learned Single Judge of this Court allowing Special Civil Application No.9142 of 1998 on 30.12.1999, the same is hereby quashed and set aside; and the impugned judgement and award passed by the Labour Court quashing and setting aside the impugned order of termination of the appellant workman is restored to the file. However, the part of the impugned order of the Labour Court awarding 30% back wages to the appellant workman, is hereby quashed and set aside. The appellant workman has already reached the age of superannuation on 30.09.2003, therefore, he will be treated as retired from service with effect from 30.09.2003.

8. Before parting we must state that on peculiar facts and circumstances of the case, without expressing any opinion on merits of the case, we have passed this order, therefore, this cannot become a precedent.

9. Accordingly, the judgement and order dated 30.12.1999 passed by the learned Single Judge is quashed and set aside and the impugned judgement and award passed by the Labour Court stands modified to the aforesaid extent only on the point of back wages only. Rest of the award passed by the Labour Court is restored. The Letters Patent Appeal is allowed accordingly.

10. A copy of this judgement be given to Shri K.M. Patel, learned counsel for the respondent corporation.

(B.J. SHETHNA, J.)

(RAVI R. TRIPATHI, J.)

karim